



KERN COUNTY PROBATION DEPARTMENT

Policies And Procedures

TITLE: Disciplinary Actions: Management Rights and Responsibilities		Article: 1406	
APPROVED: TR Merickel, Chief Probation Officer			
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POLICY

First line supervisors are responsible for developing and maintaining the highest possible level of performance in their units. Acceptable performance is the product of qualified people working cooperatively and behaving in a self-disciplined and orderly way.

Supervisory personnel should have an acute sense and understanding of the Probation Department's rights and expectations in connection with employee's behavior. When employees either disregard the department's rights or fail to fulfill the department's expectations, then supervisors react. This reaction is in the form of discipline. The degree to which the department's rights and expectations have been consciously and intelligently developed and defined is reflected in the type of discipline which occurs. The purpose of this policy is to clearly articulate the rights and expectations of the department.

I. DEPARTMENT RIGHTS

Supervisors have the right to expect employees to:

- A. Be on time
- B. Attend regularly
- C. Put in a full day's work
- D. Be physically and mentally prepared for the tasks to be performed
- E. Respond positively to direction
- F. Learn the job at hand
- G. Adjust to change
- H. Get along with co-workers
- I. Know and follow rules

The department has the right and duty to discipline an employee in order to stop or correct unacceptable behavior and to achieve employee cooperation in the performance of their responsibilities. That right is limited by laws protecting employees in various protected classes from discipline including discharge on the basis of race, religion, national origin, sex, or non-job-

related handicaps. Where a collective bargaining agreement is in force, that right may be further limited by a clause permitting discipline or discharge only where just cause exists.

II. OBLIGATIONS OF MANAGEMENT

- A. Have a uniform disciplinary policy.
- B. Publish all rules and make the rules easily available to all departmental employees for their review and study.
- C. Make certain that all supervisors and employees understand the disciplinary policy and know what to expect if misconduct occurs.
- D. Be consistent in its application of the disciplinary policy and treatment of misconduct.
- E. Use constructive, as well as punitive, disciplinary measures.
- F. Assure that individual biases of members of management do not influence how employees are disciplined.
- G. Do not rely too heavily on punitive measures.

First line supervisors shall ensure that each employee knows:

- A. Objectives of the job and of the group in which the employee works
- B. Duties and tasks to be performed
- C. Accepted methods of accomplishing duties
- D. Standards of performance for the job
- E. How standards of performance are achieved
- F. How work can be improved, and capabilities developed
- G. The policies, rules, and regulations that govern the work place

III. EMPLOYEE RIGHTS

- A. While the employer has a right to discipline; the employee has a right to react to discipline. When the discipline is perceived as unjust, the employee may react by protesting or by filing a grievance. Employees have a right to a discipline system that is fair and appropriate. This employee right to fair discipline is an essential element of due process.

Employees have a right to:

1. Know what is expected of them and what the consequences of not fulfilling those expectations will be
 2. Consistent and predictable employer responses to violations of rules
 3. Fair discipline based on verifiable facts
 4. Question the facts and to present a defense
 5. Appeal the disciplinary decision
 6. Progressive discipline
 7. Consideration as an individual
- B. Due Process: The concept of due process is an integral part of an effective progressive discipline system. Due process requires the following elements:
1. The employee made aware of the nature of his/her violation of rules or standards.
 2. The employee should not be punished unless the violation is shown by the weight of credible evidence.
 3. The employee should be allowed to know all the facts supporting a finding of a violation.
 4. The employee should be given an opportunity to defend himself or herself.
 5. The employee knew, or should have known, that certain acts may result in disciplinary action. This is the most important element of the process.

IV. PROGRESSIVE DISCIPLINE

Progressive discipline is built upon the principle of employee awareness, thereby eliminating any element of surprise.

For adequate notice to have been made to the employees, two things must exist:

1. A publication of rules and standards of conduct.
2. A publication of the discipline system itself.

The next most critical element of due process is that the charge(s) be factually accurate. Often, this depends on documentation. Without proof of each essential element of the offense, the discipline cannot and, most likely, will not be sustained.

The third requisite of due process is the employee should be allowed to know all facts of the charges against him/her. Regardless of union involvement, this evidence cannot be held in secret, but must be shown to the employee for examination. Even if the employee

does not seek to examine the evidence, but appears to accept the disciplinary action, the supervisor should take steps to ensure that a recital of the facts is documented and placed in the employee's file.

Another critical element of due process requires employees an opportunity to defend themselves in an established review procedure. An opportunity to defend means more than a obligatory meeting at which a supervisor politely listens to an employee's explanations. The employee's defense should be examined carefully, and any factual disputes resolved before the next step in the appeal process is completed.

One of the most difficult elements in any discipline system is equal treatment. The difficulty lies in the inevitable question of what constitutes equality. It is not always possible, nor is it necessarily desirable, that each employee and each infraction be treated identical. Each employee is different. All situations that require disciplinary action must be handled intelligently, fairly, firmly, and consistently in light of the available facts.

The key to maintaining equality in the administration of a discipline system is accurate record keeping. A supervisor can only be assured that discipline cases will conform to the desired pattern by keeping track of specific causes of disciplinary actions.

V. RULES AND STANDARDS

As part of an effective discipline system, the department must have rules that govern its employee's behavior. The penalties for violations are generally as follows:

Major Rule Violations

Suspension
Demotion
Discharge

Minor Rule Violations

Verbal Warning
Written Warning
Suspension
Demotion
Discharge

Continuous minor rule violations must eventually be treated as major rule violations for disciplinary purposes.

A. EXAMPLES OF MAJOR RULE VIOLATIONS

1. Theft of county property
2. Unauthorized possession or use of county property for personal advantage
3. Willful destruction, damage, or abuse of county property
4. Fighting, harassing or annoying anyone on the basis of race, sex, age, national origin, religion, or handicap in a work context
5. Insubordination
6. Intentional or frequent disregard for safety rules

7. Working under the influence of alcohol or drugs
8. Failing to notify the supervisor that you won't be in to work
9. Falsifying pay records
10. Leaving work station during working hours without permission
11. Deliberate interference with other employees and their job responsibilities
12. Negligence in the use of handguns
13. Dishonesty
14. Willful negligence
15. Falsifying, Altering or Changing any county document or department record

B. EXAMPLES OF MINOR RULE VIOLATIONS

1. Excessive tardiness or absenteeism; including returning late from lunch or break
2. Leaving one's work station without giving notice of where one may be reached
3. Conducting personal business on county time; including spending excessive time on county telephones regarding personal business
4. Unproductive use of county time
5. Incompetence
6. Distributing any kind of printed matter, or posting of such matter, without proper permission
7. Selling goods on county property without proper permission
8. Failing to attend or arriving late at scheduled training or meetings
9. Recurring incidents of overdrawing sick leave/vacation resulting in Leave Without Pay.

C. Imposing Penalties

At one time or another, every supervisor becomes involved in the task of disciplining an employee. If the supervisor does not make the final decision on discipline, he or she will play a major role whenever penalties are imposed.

Whenever an employee violates a rule and management decides that discipline is needed, this decision should never be motivated by anger or a desire for reprisal. If the employee

must be discharged, the action should be looked upon as a deterrent. When the penalty is less than discharge, it should be viewed as a corrective measure, as something that must be done to stop behavior that is not in the best interest of the department.

The following general guidelines apply to setting penalties for rule violations:

1. A suspension of one to thirty days is almost always in order for an employee's first major rule violation.
2. Discharge is almost always in order for an employee's second violation of a major rule.
3. Discharge is sometimes in order for an employee's first major rule violation.
4. Only rarely will circumstances warrant or justify a verbal or written warning for a major rule violation.
5. Consequences of repeated minor rule violations are the same as for major rule violations - suspension or discharge.

D. Guidelines for Supervisors

1. An employer's leniency may encourage abuse of the rules by some employees.
2. Circumstances can make a penalty reasonable at one time and unreasonable at another time.
3. Where discipline is concerned, there are no absolutes.
4. Excessive tardiness or absenteeism is often the most common minor rule violation.
5. Excessive tardiness is defined as two or more times within a thirty-day period, and excessive absenteeism is defined as absence from work in excess of 96 hours per year, exclusive of vacation and holidays.

VI. **ENFORCING DISCIPLINE**

- A. Once disciplinary policy has been established, the rules of conduct determined, and the appropriate penalties for violations have been established, the next step is to enforce that policy. All formal disciplinary matters shall be referred to the appropriate Division Director, the Deputy Chief and the Chief Probation Officer who will finalize the recommended disciplinary action.

The following guidelines apply to the enforcement of discipline:

1. **Make the rules known:** As a supervisor, you must have a clear understanding of the rules. You must also make absolutely certain that your subordinates know and understand the rules.

2. **Investigate before you discipline:** Except in extreme cases, you should investigate thoroughly before you pursue disciplinary action. The purpose of your investigation is to get all the available facts so that you can be confident in the reliability of your evaluation of the circumstances.
3. **Be consistent when disciplining:** You should always strive to impose the same discipline for the same offenses committed under similar circumstances by employees with similar records.
4. **Act decisively:** Although instances where a supervisor must take immediate action will be few, you must be prepared to do so when the occasion requires it. You cannot expect to be effective if you are hesitant to act when circumstances warrant immediate action.
5. **Always maintain your temper:** You must never lose your temper when handling disciplinary matters. The moment this happens, control of the situation shifts from the supervisor to the employee.
6. **Respect the employee's dignity:** At all times the employee's dignity should be respected. Discipline should be thought of as primarily a corrective and constructive measure. If you discipline in a humiliating or demeaning way, you negate the true purpose of discipline and you create a deep, lingering resentment in the employee whose dignity has been injured.
7. **Follow up and review:** You must follow up and review the employee's performance after a reasonable period of time has elapsed. You should do this whether or not behavior has improved. Your review should include an examination of the employee's performance and discussions with other parties who have had an opportunity to observe the employee's performance and behavior in action.

VII. **DOCUMENTATION**

The development and preservation of evidence is very important for success with employee discipline. The supervisor who has a good understanding of the type of evidence that can be used in arbitration and administrative hearings will be better prepared to carry out daily functions in such a way that when the occasion demands, good usable evidence for disciplinary proceedings will have been developed.

NOTE: Management has the burden of proof in disciplinary hearings; therefore, it is management that must gather and produce the evidence for the hearing.

In order to prevail in a disciplinary hearing, the employer must produce convincing evidence in support of the charges. Documentation is vital in most disciplinary cases (the exception is where the cause for discipline is based upon a single, isolated incident).

Some of the common types of evidence that can be gathered by the supervisor as part of documenting a disciplinary case are:

- A. Business Records: Time Cards, Payroll Reports, Personnel Action Forms, Performance Evaluation Reports, Probation Reports, Accident Reports, Etc.
- B. Complaints: Citizen Complaints (preferably a signed written statement).
- C. Recorded Testimony: Tape recorded interviews with the employee or witnesses. Typed verbatim transcript (signed by the person interviewed).
- D. Witness Statements: Hand-written statements prepared by witnesses. Summary of interviews with witnesses (signed by the witnesses).
- E. Photographs: Poor Workmanship, Improper Maintenance, Lack of Cleanliness, Damage to Property, etc.
- F. Examples of Work: Samples of poor workmanship, damaged property, etc.
- G. Communications to Employee: Bulletins, Posted Notices, Employee Handbooks, Rules, Regulations, Directives.

VIII. BASIC DOCUMENTATION SKILLS

Like most skills, writing good disciplinary documents takes time and practice to master. The most common mistakes made by supervisors in writing disciplinary documents are:

- A. Lack of clear, direct, relevant communication from the supervisor to the subordinate
- B. Reliance on general statements instead of specific factual detail
- C. Reliance on conclusions without a factual foundation

IX. TACTFUL, INDIRECT COMMUNICATION VS. CLEAR, DIRECT, RELEVANT COMMUNICATION

Instead of dealing with true facts, many supervisors have a tendency to be ambiguous in an attempt to be tactful and build human relations. This tendency causes a breakdown in communications. An open and direct transmission of information to a subordinate is critical in disciplinary documents.

In simple terms, the employee must be told specifically

- A. WHAT IS WRONG
- B. WHAT THEY MUST DO ABOUT IT
- C. WHAT WILL HAPPEN IF THEY FAIL TO FOLLOW THE SUPERVISOR'S DIRECTIVE

General vs. Specific

The "Golden Rule" in writing any disciplinary documentation is:

ALWAYS BE SPECIFIC AND FACTUAL.

One of the major purposes of documentation is to record specific details such as times, dates, names, places, events, etc. Disciplinary reports often contain general statements about the problem and omit the critical detail required if a disciplinary case goes to a hearing. Specific statements can be substantiated if preserved in written documentation. When preparing disciplinary documentation, remember to answer:

WHO? WHAT? WHY? WHEN? WHERE?

X. Conclusion vs. Fact

The skillful supervisor writes narrative that describes the employee's faults in a factual manner. If conclusions are used, they should be supported by a specific foundation. It is essential that the disciplinary documentation distinguishes specific from general statements and fact from conclusions. The specific and factual document not only proves management's case, but it also assists the supervisor in meeting the test for cross-examination.

XI. Disciplinary Interviews

Meetings between the supervisor and the employee are the most effective means of communicating in the evaluation of appropriate discipline. The purpose of the interview is to obtain information which may influence the level of disciplinary action taken. Prior to the interview, the supervisor should prepare a short outline of the points to be discussed. The supervisor should maintain a professional demeanor during the meeting, reflecting concern over problems discussed without being emotional.

The investigative interview is to obtain information related to suspected employee misconduct. The objective is to obtain specific facts and information to determine culpability. At the outset, the employee should be told the reason for the interview. He or she should be asked to fully explain his or her version of the incident.

The experienced supervisor will note the employee's responses to important questions and record the major points covered. Such notes serve to trigger the supervisor's memory when a typewritten summary is made shortly after the interview.

The interview summary is a critical document which must be made part of the employee's personnel record. The well written summary will show:

1. To whom it is directed, who prepared it, the date prepared, and the subject.
2. The time, date and place of the interview along with the names of those present.

3. The purpose of the meeting.
4. A clear description of the problem.
5. The conduct or performance standards required by the employer.
6. The employee's comments, including answers to critical questions, admissions of wrongdoing, and commitments made in regard to future performance.
7. The employee received a copy of the summary or has read its contents and, if possible, the employee agrees the summary accurately describes the interview.

XII. PREPARING FOR ARBITRATION

The issue before an arbitrator frequently requires findings in respect to the existence or non-existence of "just cause" for discipline, up to and including discharge.

Over the years the opinions of arbitrators in countless discipline cases have developed a common law definition of "just cause." This definition consists of a set of guidelines or criteria that are to be applied to the facts of any discipline case. The criteria are set forth below in the form of questions.

A flat "no" answer to any one or more of these questions normally indicates that just cause did not exist. In other words, a "no" means that the employer's disciplinary decision contained one or more elements of arbitrary, capricious, unreasonable or discriminatory action to such extent that the decision constituted an abuse of managerial discretion warranting the arbitrator to substitute his or her judgment for that of the employer.

XIII. THE QUESTIONS

- A. Did the employer give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?
- B. Was the employer's rule or managerial order reasonably related to the orderly, efficient conduct and safe operation of the employer's business?
- C. Did the employer, before administering discipline to the employee, make an effort to determine whether the employee did in fact violate or disobey a rule?
- D. Was the employer's investigation conducted fairly and objectively?
- E. At the investigation, did the investigator obtain substantial evidence or proof that the employee was guilty as charged?
- F. Has the employer applied its rules, orders and penalties evenhandedly and without discrimination to all employees?

- G. Was the degree of discipline administered by the employer in the instant case related to (a) the seriousness of the proven offenses, and (b) the record of the employee while working for the employer?